



## COMMUNITY DEVELOPMENT DEPARTMENT

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### PLANNING COMMISSION MEETING MINUTES

CONTINUED MEETING

JUNE 1, 2004

PRESENT: Acevedo, Benich, Engles, Escobar, Lyle, Mueller, Weston

ABSENT: None

LATE: None

STAFF: Planning Manager (PM) Rowe, City Attorney (CA) Leichter, and Minutes Clerk Johnson

Chair Mueller reconvened the meeting by calling it to order at 7:10 p.m., and asking CA Leichter to lead the flag salute.

#### **DECLARATION OF POSTING OF AGENDA**

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

#### **OPPORTUNITY FOR PUBLIC COMMENT**

Chair Mueller opened the public hearing.

With no one present indicating a wish to address matters not appearing on the agenda, the public hearing was closed.

*PM Rowe and Chair Mueller announced that even though the actions for agenda items 1 and 2 were distinct, the items were intertwined and therefore, would be discussed concurrently.*

#### **OLD BUSINESS**

##### **1) REVIEW OF FINAL EIR FOR THE INSTITUTE GOLF COURSE**

Review of the Final Environmental Impact Report for the Institute Golf Course and Mathematics Conference Center located at 14830 Foothill Avenue in Morgan Hill. The Final EIR incorporates responses to comments received on the Draft EIR and contains the mitigation measures required to reduce the project impact to less than significant levels.

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### 2) ZA-03-03: FOOTHILL-THE INSTITUTE

A request to amend and expand the existing Planned Unit Development zoning and to create a precise development plan for the operation of an 18-hole private golf course on approximately 192 acres and to replace an existing 58,946 square foot restaurant building with a new 58,550 square foot office, conference center and library for the American Institute of Mathematics. The project is located at 14830 Foothill Avenue on the east side of Foothill Avenue opposite East Middle Avenue. An Environmental Impact Report (EIR) has been prepared for the project. Environmental mitigation measures and findings of overriding consideration will be adopted.

PM Rowe explained that a revision to the EIR, as well as Exhibit "A": conditions for approval review of past actions were being distributed and presented this evening. He also gave an overview of the revised Resolutions with the amendments and backup data. PM Rowe specifically identified the issues staff had been charged with reviewing and making recommendation:

- Changes: Revision to mitigation for the red legged frog with the 35-acre purchase at Kirby Canyon (this would equate to 51 acres elsewhere, but still requires the purchase of 16.2 acres for mitigation of the red-legged frog - and the loss of serpentine area - at a yet undetermined location)
- Flexibility to a 30-foot setback (the U.S. Fish and Wildlife Service approved an exception for #6 green as long as there is compensation at the north side)
- Restricted access to areas of riparian habitat sensitivity
- Groundwater depletion (an explanation of the definition)
- Ordinance trees – include acknowledging trees planted onsite to be counted as replacement trees
- Conditions of approval – listed as part of the Resolution dealing with the EIR
- Regarding the zoning application, there are new items (23 – 28) in Exhibit "A", which deal with the play of golf
- Modification to landscape requirements as a result of 'visual concerns' noticed in the neighborhood meetings and the public hearings
- Drainage and conduit for the drainage
- Drainage culvert size at Foothill and Maple
- Odors from the maintenance of the course (and Commissioner Weston had already addressed composting as a related item)
- Fertilizer applications
- Water tank location

The document containing the aforementioned changes was distributed by PM Rowe.

PM Rowe announced these amendments to the Final EIR include:

- change that has to do with the Riparian Habitat concerns with the requirement of removing physical barriers and amending rules of play designed to discourage entry to the Habitat. In addition, there was an additional approval of the drainage analysis redesign which is included in the provisions of Exhibit "A".
- Conditions of approval which contain the provision of prohibition of entry to riparian habitat

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- On-site drainage plan, contained in Exhibit “A” at the top of page 5
- Pesticide and herbicide use application (condition 15 of Exhibit “A”) item k on page 9, which deals with the sixth hole (note to subparagraph K for clarification)
- B2 on page 14 addresses the mitigation for lost ordinance-size trees
- Page 2 of Exhibit “A” item C deals with vegetated buffers around the ponds; this buffer is significantly narrower than those previously mentioned in the mitigation reports. PM Rowe told of efforts to look for alternatives, to the requirements and with the placement of un-maintained dense grasses with suggestions and advice from a biologist. PM Rowe also said there may be a possible modification of this item to incorporate several types of grasses (also to be included into the Final EIR).

PM Rowe reminded that Resolution No. 04-55 deals with the EIR, and Resolution No. 04-54 plus Exhibit “A”, including the additional conditions 23 – 28, which had been ‘broken out’ and listed as ‘other conditions’ relate to the PUD.

Commissioner Escobar called attention to Resolution No. 04-55 item B, page 2, whereby a number of agencies are listed, with the second sentence of that section, recommending ‘that each of these agencies also adopt the project mitigation that is within the responsibility and jurisdiction of said agency’. “What happens if they don’t?” he asked. “What are the implications to our process?”

PM Rowe responded he didn’t believe there to be an issue, as he referenced CEQA guidelines.

Commissioner Escobar continued by asking if that would lessen the mitigating factors, or erode the ability to oversee the mitigation.

Roger Beers, 2930 Lakeshore Ave., Oakland, Consulting Attorney to the City, told Commissioners that one jurisdiction can’t deal with another jurisdiction’s authority. He said that if the Commissioners wanted, they could require the applicant to get permits from the other agencies.

PM Rowe stated, “We (the City) have done that.”

Commissioner Lyle said that the second sentence of Resolution 04-55, revision # 50, makes it sound as though the City may turn down that proposal. “It seems like ‘just extra work’,” Commissioner Lyle said.

PM Rowe explained the City hasn’t been able to complete all inspections and wants to be able to rely on the U.S. Fish and Wildlife Service to see that the replacement habitat (at Kirby Canyon) is equivalent to the mitigation requirement.

Turning then to the issue of the setback of hole 6, Commissioner Lyle commented that in granting an exception, with the reduction of the setback being lessened to 10-feet, it makes it sound as though there could be a ‘pick up’ of 40-feet on the other side, which provides for a seemingly inconsistency.

PM Rowe explained that the U.S. Fish and Wildlife Service has agreed to that matter

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as part of the agreement with the applicant.

Commissioner Lyle then called attention to page 6, item 84, which references Mitigation Measures Not Presently Incorporated Into The Proposed Project (Groundwater Resource Depletion), but which was referenced in the Draft EIR, and questioning the cumulative effect the land use in agriculture may have played in that depletion. "Ag land uses a certain amount of water; when the land is no longer agriculture, and development occurs, there is reduction in the amount of groundwater depletion," Commissioner Lyle said.

Ms. Michelle Yesney, David Powers and Associates, 1885 The Alameda, #204, San Jose, an Environmental Consultant to the City for the production of the EIR was present to speak to the matter. Ms. Yesney told Commissioners that the Groundwater Use Study indicates the cumulative effect of water usage for known times, and the historical data indicates the presence of a dairy at one time, which had a history of disproportionate water use, thereby most likely increasing groundwater depletion, although that data is still being recovered.

Commissioner Escobar asked if the Final EIR established a process for monitoring how the habitat was maintained.

Ms. Yesney said she has not completed the mitigation monitoring plan, noting that she could defer to the U.S. Fish and Wildlife Service or alternatively, have the applicant provide annual reports on the status.

Chair Mueller said the City could request a report from a third party as part of the mitigation plan.

Commissioner Benich asked Ms. Yesney if the applicant buys the 35 acres at Kirby Canyon, if the U.S. Fish and Wildlife Service should monitor the mitigation on it?

Ms. Yesney replied that the City can't delegate its responsibility for monitoring.

Mr. Beers agreed, saying, "That is correct. The City must be sure that the conditions of mitigation are being done. That may be achieved by the U.S. Fish and Wildlife Service imposed conditions and the City may be satisfied with those. If not, the City may require the establishment of a monitoring plan."

CA Leichter read from a reports indicating that the mitigation measure is to provide replacement habitat and the City must ensure that habitat exists.

Commissioner Lyle said he is troubled that 100 years from now someone working for the City would have to go out and inspect the area two or three times a year.

Discussion ensued regarding mitigation of habitat.

Commissioner Escobar said when there is an agreement, there is a need to hold to the agreement until it is no longer required.

Chair Mueller asked what the monitoring plan needs to define?

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Commissioner Benich asked who completes the monitoring plan.

Chair Mueller explained the City Council must adopt the plan.

PM Rowe said the monitoring plan is being worked.

Commissioner Weston expressed an opinion that the desired outcome of the ponds ecosystem should be a requirement at the time of establishment of the pond.

PM Rowe noted that for a particular mitigation, the responsibility of monitoring is the City's.

Commissioner Acevedo turned attention to Resolution No. 04-54, asking if retail is part of the PUD use and how much in this instance is retail proposed to be? How do we determine what the retention part of the operation is? I suppose there will be a pro-shop. Are taxes collected as part of a private operation such as this? This led to discussion of the ability of the Commission to require the applicant to obtain a business license. Chair Mueller felt that the PUD requirements cover this.

Commissioner Acevedo expressed the need for specificity, as the data in the resolution does not.

CA Leichter says the identified uses of the PUD include the pro shop, so there can be an assumption that there is a need for a business license, and tax will be collected.

Commissioner Escobar asks about food service provision?

CA Leichter indicated there is not specific mention of food service provision in the PUD documents.

Commissioner Benich, referencing page 1, #50 of the revisions, said he can now take exceptions to the language and wants two or more bull frogs specified. Discussion followed, with other Commissioners not generally supporting a change. PM Rowe commented that in the Final EIR the consultants came up with recommendations, and worked closely with biologists for this item.

Chair Mueller opened the public hearing.

Keith Anderson, PO Box 1409, San Martin, representing South Valley Streams for Tomorrow as the Environmental Advocate, said he supports the purchase of the 35 acres at Kirby Canyon. Mr. Anderson said he also liked the clarification dealing with red-legged frogs (Exhibit "A", page 15 D), and asking if it would also apply to Revision 50, page 1, as they appear to speak to 'equivalent' in both instances.

PM Rowe explained that the 35 acres of serpentine area was to be purchased, and an additional 16.2 acres is required to provide the total mitigation required for the red-legged frog.

Chair Mueller clarified the same acreage (51.2) is referenced in Exhibit "A", page 15

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D and Revision 50, page 1. "The 51.2 acres is the same in both places," he said.

PM Rowe agreed it is the same.

Stephen Sorenson, PO Box 1448, appeared on behalf of the applicant, and offered clarification of the discussion of last week: an alternative mitigation does not need to be exactly equivalent. An equivalent mitigation only needs to pass the hurdle for meeting 'significant', he said. Mr. Sorenson continued that alternative mitigation measures can be returned to the City's Consultant for review, as they look to reduce 'impact to less than significant', but does not require recirculation of the EIR.

Mr. Sorenson then turned to items for which he asked clarification or suggested alternatives to.

Exhibit "A": (#2) Red-Legged Frog Mitigation Measure Package I. Mr. Sorenson expressed the feeling that a 10-foot buffer is not needed around all the ponds. "We would like to go on with present practices plus the CHAMP, and continue to monitor the operation. As to ponds D and G, Mr. Sorenson claimed, there is larger than a 10-foot barrier now required. Scientific studies have shown no impact at this time. Mr. Sorenson noticed that there is 'no significant impact as far as scientific testing can show'. He suggested the mitigation(s) listed in 2 D, page 2, are 'not an effective method and are in conflict with item F. Mr. Sorenson then propose to include an alternative to 2D, making it the same as 2 C, with the inclusion of continuing monitoring of water. Turning to 2 E, Mr. Sorenson explained this has to do with the 50-ft setback from the center line of Corralitos Creek where studies had not detected any chemicals; however, the applicant is willing, he said, to provide an alternative: create a buffer with 30 to plus 70 feet, averaging 70 feet with an undulating buffer. In presenting the alternative, Mr. Sorenson said this is consistent with what other agencies have worked on.

Chair Mueller asks questions about A under item 5, page 3 (Riparian Habitat), which asks for a 25-foot setback at lower quality riparian habitat and 100-foot at higher quality.

Mr. Sorenson asked Randall Long, 329 Mt. Palomar Place, Clayton, to speak to the issue.

Mr. Long said that on this particular subject, it has been his experience that if there is heavy construction adjacent to a habitat, larger setbacks are required to ensure the habitat is not disturbed. "Here all the use is controlled and such large setbacks are just not needed in this regard," Mr. Long said. "The buffer is a high-quality habitat on a 2:1 slope, the area is woody, and overgrown; having this large of a buffer which offers protection is different. There will not be grading in this area."

Mr. Sorenson spoke again telling Commissioners (item 5 B, page 3) that since the intent of this mitigation is to protect the riparian corridor, the applicant proposes to have an expert annually review the site and recommend corrective action if any damage occurs.

Calling attention to item 6 A 2 (top of page 5), Mr. Sorenson said the off site flooding volume issues have been solved. He spoke on the flow of water onto Foothill Road,

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saying he had met with County Officials, who said it was a matter the City would have to deal with. He also told of a neighboring property where the drainage culverts are small and appear to escalate the following problems in the area. Mr. Sorenson declared, "This sounds like this area of the drainage plan needs further clarification."

Mr. Sorenson referenced Page 6 item 8 A 4, saying this is just a repeat of prior discussions where the 50 ft. from the center of Corralitos Creek is noted. He requested that the U.S. Fish and Wildlife Service language agreed to for the buffers around the ponds be substituted here as well.

Commissioner Lyle called attention to the minimum of 30 up to 70 per cent of Corralitos Creek banks which had been discussed. Commissioner Lyle was interested in how the determination was made? Mr. Long used visuals to explain the areas involved, and telling Commissioners the effort made to reach an average to meet the need. Commissioner Lyle asked if in some places the area from the center of the Creek would be less than 25%? Mr. Long agreed, again citing the average.

Page 7, 8 B 3 (Water Quality), was discussed, with Mr. Sorenson seeking clarification regarding the preparation of an analysis to determine the mitigation being sought. Mr. Sorenson said he was not sure what the intent is for this.

Mr. Sorenson asked about the last sentence of 8 B 4, saying it is understood if the applicant changes the Nitrogen Control Plan, the Plan must be sent back to the various agencies. If, however, the Plan indicates a change in fertilizer, Mr. Sorenson said it should not go back 'through the process', let the experts decide. Furthermore, Mr. Sorenson asked for clarification of the Fertilizer Control Plan, indicating he thought it was part of the Nitrogen Control Plan.

As to 8 B 8, Mr. Sorenson asked for the ability to make adjustments on the basis of weather forecasting for the local area, giving the example of impending rain (weather forecast) when irrigation would be minimized. "Overall it averages out, but because of daily variances, we want to be sure of accommodation within this condition," Mr. Sorenson said. Commissioner Acevedo responded that the second sentence of the section should take care of that.

When Mr. Sorenson sought clarification of 8 B10, Commissioners made this modification: ...as needed, *to meet the goal in item 8 B 3...*

Mr. Sorenson noted that 8 B11 and 12 are similar to matters earlier discussed regarding buffers and setbacks.

Declaring 8B13 'difficult to do' or even define logically, Mr. Sorenson said this could result in a 'muddy mess'. He also said that 8 B15 would have the same results as 8 B13. Mr. Sorenson also indicated that when the golf course was built, permission was given to drain to the creek; then the applicant was told not to do so; then told to drain to ponds; then told not to; then told to have the creek rip rapped; then there was disagreement among the agencies about that. Subsequently, the applicant was told to remove the rip-rap and put a pipe in. "We want to tie in with what the Santa Clara Valley Water District has most recently asked us to do," Mr. Sorenson said, "and that would be matched to item 8 j (asterisk 3)."

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Mr. Sorenson said that the conditions of 9 B, Page 10, have been met. He also said the 100-year storm designation had been incorrectly applied. This property is in FEMA's 100-year flood plain, he said, as he talked about an upstream dam built by the Corps of Engineers to slow down the storm water.

Mr. Sorenson said that item 20e on Page 15 has created confusion. We have been consulting with the U.S. Fish and Wildlife Service in the matter of fertilization and had gotten an agreement which indicated we would not see the matter again; that we were not required to get a permit. Other agencies have all been involved in this process, and we are not sure what authorizations are needed at this point, as we thought it included those issues in the EIR.

For 21 b on page 16, Mr. Sorenson said there is an alternative proposal: The off-site mitigation for the tiger salamander indicates three ponds should be eliminated. We have already created five acres of ponds and would like credit for this mitigation measure of five acres of ponds created on the site, he said.

As to item 22 (Williamson Act), Mr. Sorenson said, "We believe that all uses that are on site comply with the uses and intent of the Williamson Act and therefore we don't think there is a need to file a non-renewal notice. Nor do we think it is within EIR to ask for a non-renewal notice." Mr. Sorenson asked that this condition be removed asks to be removed from both the EIR and Exhibit "A".

Item 23 speaks to 'days of play'. Mr. Sorenson asked that instead of April 16 to September 30, the applicant be allowed 'floating' days to incorporate 6 months, stating that weather conditions may make a huge difference in the range of time. Furthermore, the second sentence of item 23 is limiting, he said, noting this is the policy, but saying that if the need arises for meeting the requirements of ADA, a cart will be used.

Item 25, page 17 (drainage issues), Mr. Sorenson said the applicant had County personnel out to look at the drainage. "There is a substantial pipe on Maple that runs to Foothill, where a small pipe is located on Foothill. The County says that is not their responsibility." Mr. Sorenson wanted to know what the City will do in the area."

Page 17, Item 26. Mr. Sorenson recalled the large rainstorm earlier this year, which had resulted in local flooding in the area. He spoke of a house on Foothill which has an undersize pipe and backs up water to the project site. Mr. Sorenson stated he was unclear if mitigation suggested could occur, as he doesn't know if the applicant can complete the requirement because it is a private site.

Concluding, Mr. Sorenson said he was not clear as to the issue in item 27.

Chair Mueller reminded this was in reaction to meetings with neighbors, where concerns about sulfur dioxide applications were voiced.

Chair Mueller, asked, "In terms of items where the applicant asked clarification, how best to proceed?"



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PM Rowe said staff could prepare the response and present it to the Commissioners. He also indicated Ms. Yesney would address any specific issues the Commissioners request.

Mr. Long spoke to some of the mitigation alternatives Mr. Sorenson suggested. He dwelt on the buffers the applicant requests, stressing that the handouts tells of a better alternative in terms of what Mr. Sorenson spoke on high quality riparian habitat, which he claimed contains 200 year old oaks and tapers to thin areas of habitat. Mr. Long talked at length about the need for re-grading if 100-foot setbacks are required.

Commissioners discussed with Mr. Long the differences in having opposition to moving tees or concerns of environmental upheaval in moving the tees. Mr. Long stated the buffer not threatened would not be threatened in either case. Also discussed was the allowance of encroachment within 25 feet of riparian habitat.

Commissioner Lyle called attention to page 3, item G. Mr. Long responded that the setback to the riparian is for a 25-foot area. He spoke on the tributary areas and where they are located. "If we go back 50 feet from center of the Creek, if we go within that, we would have to re-grade." Mr. Long talked about regrading for resloping of Creek setbacks and riparian setbacks. He said the point is, we don't know where the 50-foot requirement came from. The 30-foot requirement came in discussion with the various Agencies, so we want the 30-feet instead of 50 feet.

Discussion was also had regarding riparian habitat and shelves around the ponds.

Mr. Long explained the plans to vegetate large areas around pond G and place willows at pond F. He spoke on the vegetation at pond E and the relation of these ponds-to-space -of-play-area asking for in design flexibility, so inside shots would not be obstructed.

With no others present indicating a wish to address the matter, the public hearing was closed.

Ms. Yesney provided the response to the alternatives asked by the applicant. She reminded Commissioners of the events in having the Final EIR presented at this time. During the second public hearing, issues were raised which resulted in the re-circulation of the Draft EIR which was circulated a year ago. The issues raised tonight regarding the analysis in both the Draft EIRs includes all the information dealt with in the original Draft EIR process. Staff and Consultants have gotten the comments and responded to them in this Final EIR. "It is essential to note," Ms. Yesney said, "that there is no new information to present. The mitigation monitoring plan will provide the specifics needed as to how mitigation measures are handled. That information and process are required by CEQA and state guidelines already." Ms. Yesney went on to inform that the alternatives asked for by the applicant tonight are not equivalent to the identified mitigations; furthermore, there has been no suggestion which would provide mitigation of the known impacts, she said.

PM Rowe summarize where the Commissioners are at this point: the EIR has been circulated twice, also letters and comments well beyond the usual were routed with all identified circulation. The comment periods were extended. The conditions of

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approval included as Exhibit "A" are a compilation of responses to the comments and there are fewer conditions at this point. "In order to move to this matter to the City Council," PM Rowe said, "the Commissioners need to adopt the Resolution and findings and conditions of the mitigation issues."

Commissioner Benich said it seems that the Commissioner's job is an obligation to read, review, listen and then sift through the issues, and make some judgments. "I won't just look at and say 'ok'," he commented, "I – and all the Commissioners - must use some discernment."

Commissioner Acevedo noted the applicant asks for clarification in many areas, saying there is probably an obligation to discuss those.

Commissioner Benich said he thinks what the Commissioners should do is go through each of the ones the applicant has indicated.

Commissioner Weston said he is willing to accept Exhibit "A" as presented.

Commissioner Engles asked how the issue of the 'floating time frame' came about? He also said the Planning Commission could address the concerns they have, then leave it to staff to form the answers.

Chair Mueller stated his opinion that it is important go through each item the applicant raised.

Commissioner Acevedo said, "It is time to give clarification as much as we can. We have had a lot of time on this and unless significant scientific data can be presented, it is time to move on, except for the areas of clarification."

Commissioner Lyle's opinion was that the Commissioners must have some discussion for clarification, so that there are not problems later. Furthermore, there were a 'couple of substantive issues he wanted the Consultant to address.

Commissioner Escobar said there were a couple of things to address, nothing substantial.

Commissioner Engles made it clear he wanted to wrap up the discussion this evening and send the proposal on to the City Council.

Chair Mueller said the best way would be to clarify where asked to do so, then look at other issues raised. If the Planning Commissioners have concerns, and resolve this night if possible, that should happen, otherwise it would be necessary to decide on the next action.

PM Rowe sought to clarify one of the issues: Exhibit "A", Page 14-15 (where habitat mitigation for red-legged frogs was discussed), The 51.2 acres is the same as on first page, Item 2.

Regarding items 2D and 2F of Exhibit "A". there was a question if these were in conflict? Ms. Yesney indicated there was not intent for conflict and suggested

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language of clarification could easily be inserted which could obtain a satisfactory solution: a modification 2 D: ....storm drain outlets shall not empty *directly* into any drainages...

PM Rowe agreed, saying that change to D for clarification (the discharge to the pond) would indicate the flow through vegetated swales, etc.

Page 5 2 (top of page), Commissioner Acevedo said if there is revision to the drainage plan, it should be done for the whole site. CA Leichter said if a redesign were required and a revision of the area in question, if affects the whole, then it would require a report for the whole site. It was agreed that a modification would be included to indicate where such a report would be sent.

Chair Mueller asked if it would be necessary when a solution to a problem is reached, to submit data showing how, etc.?

Discussion ensued regarding Page 7, in consideration of pre-project conditions which were largely agricultural, but is a 40-acre golf course now. Commissioner Lyle noted the applicant is asking how do you know what the previous 40-acre golf course nitrogen usage was if there are no historical records? Ms. Yesney spoke on how pre-project nitrogen loading can be decided and told Commissioners that the research has begun to do just that. She also told of how planning can get reliable comparison through analysis. Furthermore, Ms. Yesney remarked, we thought an agreement had been reached with the applicant's representatives. Discussion continued as to the inclusion of the Fertilizer Control Plan being a part of the Nitrogen Control Plan.

PM Rowe cautioned that the Commissioners were starting to analyze the increments and stated they needed to look at the 'whole part'.

Commissioner Acevedo agreed, urging that the Commissioners not find a need to nitpick each item.

PM Rowe asked Commissioners to give direction to staff to get in contact with experts to resolve any questions or issues. We can't do that tonight, he told Commissioners.

Commissioner Weston asked exactly what 8 B10 means? PM Rowe responded that it is part of the Nitrogen Control Plan, adding that first there must be a determination of the nitrogen application rates, and that can't be done until it is determined what the application should be, as he added, "There is need to achieve balance." Chair Mueller commented that as it is written, it could go all the way down to zero. I'm hearing it's a 'closed loop thing' and may require turf to be removed, but we don't know. The applicant says if it is taken as a mitigation measure on its own, it can't be determined. The applicant says he wants clarification of the potential of the end result."

Commissioners discussed the inclusion of weather predictions into account of the irrigation. Ms. Yesney agreed it would be reasonable to consider local weather conditions. PM Rowe said the applicant may have to consult with the various Agencies gaining approval for this.

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Commissioner Lyle asked, regarding page 10, item 9 B, why this requirement for this owner, but not the previous owner when the old course did not have this requirement? Commissioner Weston expressed the opinion that this deals with flooding in the neighborhood. Ms. Yesney informed that this has to do with the water quality section and this was determined by other experts, while reminding this may deal with contaminants. Commissioner Lyle persisted that this is asking for mitigation far over and above that required of the previous owner.

CA Leichter expressed a need for determining clarification on Commissioner Lyle's point and said she will check with experts.

CA Leichter referenced Page 15 20 D and E, when discussion indicated the Commissioners were not sure what authorization is needed for providing an easement. However, she thought the EIR would give authorization. CA Leichter said there has been no clarification from the U.S. Fish and Wildlife Service if they would have jurisdiction and enforcement obligations. She further reminded that the U.S. Fish and Wildlife Service says this is an acceptable mitigation measure. Mr. Beers stated there may be some confusion in language, so if the authorization reference is eliminated, it might be better understood. CA Leichter stated she would have her staff check on the matter.

Mr. Beers also addressed the issue of the Williamson Act (Page 16, #22), saying this is an agreement between the City and the applicant. "I think what is intended: The City can issue a notice of non-renewal if it is determined that the uses of the property are not compatible with the Williamson Act."

Chair Mueller asked if that determination has already been made or is it yet to be made?

Mr. Beers responded that the EIR indicates a determination of non-compatibility and this is the easiest way to non-renew.

CA Leichter explains that golf courses are not listed as a compatible use in the Williamson Act.

Commissioner Weston asked if the City intends to issue the notice of non-renewal?

CA Leichter said she believes the issue would be addressed before the City Council.

CA Leichter spoke on item 23, page 16, as it is written, she said, it excludes meeting ADA requirements and that can't be done. Responding to questions, CA Leichter said she needs to research if facilities such as private golf courses are subject to meeting the ADA.

Commissioner Engles asked how dates of play for April 16 - September 30 were determined? CA Leichter responded that the applicant provided dates, as well as alternative measures to golf cart use.

PM Rowe said the applicant explicitly asked for those dates and the provision of no golf carts.

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CA Leichter said a lot of the mitigation measures are connected to the requested dates of operations. If the dates are changed, they must go back to the consultants. Conversely, she said, since the applicant made the request originally, it probably would be better to leave them as stated in the EIR and Exhibit "A".

The question arose (regarding #25) as to why the City did not assume the responsibility for replacing the 8-inch pipe with an 18-inch pipe - why would that responsibility be placed on the applicant? CA Leichter explained that this is the same treatment as with the other conditions of the project – the project is causing an effect.

Item 26, Exhibit "A" page 17 was discussed with CA Leichter informing this is a 'routine' requirement of applicants. "The City does this all the time so the impacts of the project are mitigated." Commissioners agreed, this is a frequently noted Standard Condition. Chair Mueller said this came from meetings with the neighbors who were not clear if the issues were directly related to the project. He reminded the City Engineer's determination is final. Commissioner Lyle said the policy seems to be encouraging the applicant to fix problem if the project caused the problem or not. Commissioner Weston argued that it is, and has been, and should be a Standard Condition. Discussion followed regarding the Maple and Foothill intersection, and the size of the culvert at that location. CA Leichter reminded that if the City Engineer determines flooding, this condition of approval requires the applicant to fix the problem and there must be a nexus between the project and the problem. Chair Mueller stated it seems the process is reasonable.

Other issues discussed included:

- buffers around ponds - Commissioners indicated agreement with the staff report
- grading
- water must be captured before going into the creek regardless if there is a 20 or a 30 foot setback
- whether the 100-foot or 25-foot buffer to the riparian habitat areas are excessive; several Commissioners felt 100 feet to be 'overkill'
- easements cannot be on the property; it is part of the Mitigation Monitoring Plan – easements must be off-site

Chair Mueller said he wanted the clarification to come back for the Commissioners to review again. Others Commissioners indicated confidence in a competent staff to make the changes or modifications based on discussion at this meeting.

Commissioner Engles stated, "The staff can iron out any issues founded on what has been said." Commissioner Lyle spoke for many of the Commissioners in saying, "I have belief that the staff understands what we want done."

**COMMISSIONER ENGLES OFFERED RESOLUTION NO. 04-55, WITH THE FINDINGS AND CONDITIONS CONTAINED THEREIN, RECOMMENDING CERTIFICATION OF THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE INSTITUTE GOLF COURSE AND MATHEMATICS CONFERENCE CENTER AND WITH THE FOLLOWING INCLUSIONS:**

**amendments to the FEIR**

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**modifications identified in discussion**

**COMMISSIONER ACEVEDO SECONDED THE MOTION WHICH PASSED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

**COMMISSIONER ENGLES OFFERED RESOLUTION NO. 04-54 RECOMMENDING APPROVAL OF THE INSTITUTE PLANNED UNIT DEVELOPMENT CONSISTING OF 192-ACRES LOCATED AT 14830 FOOTHILL AVENUE, WITH THE FINDINGS AND CONDITIONS CONTAINED INCLUDED, AND WITH THE FOLLOWING MODIFICATIONS:**

**Section 3: (last sentence) Mitigation measures not presently incorporated into the proposed project shall be required, per the Conditions of Approval, as amended by the Planning Commission at the special meeting of June 1, 2004 and attached to this Resolution as Exhibit "A".**

**COMMISSIONER WESTON PROVIDED THE SECOND, REQUESTING THE FOLLOWING CONDITIONS BE INCLUDED:**

- The majority EIR is to be certified and completed prior before grading can commence. (CA Leichter informed the City Council cannot approve the project before all mitigations and the EIR are completed.) This item was stricken
- All buildings on the site are to be permitted by the Building Department. Commissioner Weston said many of the buildings do come close to not complying with required setbacks and may need a variance. CA Leichter expressed the opinion that the buildings were probably 'grandfathered' in at the time of purchase by the applicant, and indicated her staff would look at it. Other Commissioners said this is a Code Enforcement issue. It was indicated that entry to the site has been difficult for City personnel.
- Parking current size and landscaping: Commissioner Weston called attention to the need for having parking space for five stalls, then tree plantings, and this pattern is to be repeated. Commissioner Acevedo read the language of the PUD, which says parking shall meet City standards. PM Rowe reported the Architectural Review Board will review the plans and ensure compliance
- curb and gutter along whole site along Murphy Avenue (there was no support for this; Commissioner Weston quickly withdrew the proposed condition)

**CONSEQUENTLY, COMMISSIONER WESTON SECONDED THE MOTION AS PRESENTED BY COMMISSIONER ENGLES. THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

**ADJOURNMENT:**

With no further business to come before the Commissioners, Chair Mueller adjourned the meeting at 10:53 p.m.

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**MINUTES RECORDED AND PREPARED BY:**

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**JUDI H. JOHNSON, Minutes Clerk**

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